

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1880.—Ordered to be printed.

Mr. FERRY, from the Committee on Finance, submitted the following

REPORT:

[To accompany bill S. 436.]

*The Committee on Finance, to whom was referred the bill (S. 436) for the relief of Charles Clinton, have considered the same, and report:*

That this bill was before the House of Representatives in the first session of the forty-third Congress, and in the third session of the forty-fifth Congress. In the first instance it was reported unfavorably, and in the latter session favorably, but did not pass the House.

The first of said reports is as follows:

[H. Report No. 5, 43d Congress, 1st session.]

*The Committee on Claims, to whom were referred the bill (H. R. 308) for the relief of Charles Clinton, late assistant treasurer of the United States at New Orleans, La., and the accompanying papers, have had the same under consideration, and report as follows:*

Charles Clinton was assistant treasurer at New Orleans from June, 1869, until March, 1873. In the discharge of his duties he necessarily employed certain clerks, of good repute for honesty and competency; one of them being Charles H. Shute, cashier and paying-teller, another being John L. Henderson, receiving-teller, and another, John H. Nufele, master-porter and counter of currency. There were two apartments, or rooms, in the office of the sub-treasury; one of them being occupied by the assistant treasurer and book-keepers, and the other by the cashier, receiving-teller, and the porter.

It appears that the counter used by Mr. Shute was nearly four feet high, and protected by common panes of glass and a slight wooden railing above the glass. These panes of glass were not shaded, and any one outside could easily see everything that lay on the counter inside of said protection. It is alleged by Mr. Clinton that the top of the protection to the counter was about seven feet from the floor; but it appears that there was a projection of the counter about eight inches outside of the protection, so that it was easy for any one, during a brief absence of the cashier, to step onto said projection, and, with a hook or cane, take without the slightest difficulty any package that might be on the table at the time.

It appears that on the 1st day of May, 1871, between the hours of 2 and 3 o'clock, the cashier and receiving-teller were occupied in the vault, leaving no one in the room except the porter, who was engaged in counting currency opposite to Mr. Shute's counter, and with his back to it. Mr. Shute testifies that about two o'clock in the afternoon of that day he had received from Messrs. Pike, Brother & Co. sundry packages of United States notes, old issues, amounting in the aggregate to \$25,600, among which was one package containing \$5,850.

The whole amount so received was lying on the counter when he went into the vault. It does not distinctly appear how long Mr. Shute was absent from his counter. The special agent of the Treasury, who made an examination soon after, says it was for a "short time." The porter testifies, "that later in the afternoon I was at the table counting the old and mutilated currency received during the day, and while I was thus engaged the cashier was most of the time in the vault counting stamps;" "that there were a few persons in the office, outside the counter, whose business was attended to by the cashier, who came out of the vault for that purpose;" which seem

to make the inference strong that the absence of the cashier from his counter was not merely for a moment, but it was for a considerable period of time.

Mr. Shute testifies that at or soon after three o'clock he commenced getting his cash ready to put in the vault, and upon counting the old money from Pike, Brother & Co., at once missed the package of \$5,850, which was not to be found. Diligent inquiry was immediately made as to the manner in which the money was stolen. It was found, on examination, that there were distinct marks of a foot-print in sand on the projection of the counter outside of the protection, and the conclusion seems clear that the money was taken by some one outside the counter. The special agent of the Treasury is of that opinion. Every agency seems to have been employed to find the money and thief without success.

The committee see no reason to doubt the truth of all the facts as thus stated, and the only question is to determine whether, on the statement of facts thus made, it is the duty of Congress to give the relief to Mr. Clinton proposed in the bill.

It is undoubtedly a case of hardship to Mr. Clinton, but it seems to the committee that before relief of the kind here sought, for the refunding to any officer of the government of public moneys which were stolen, it should be at least shown that every reasonable precaution had been taken for their security—about the care and prudence and forethought; and there ought to be no doubt left. There ought not to be merely an *improbability* that the money would be stolen, but it ought to be shown that it was as nearly impossible as it was possible to make it, under the circumstances, that it *could* be stolen.

In this case no violence was used, no safe was blown open, no burglary committed; but a large amount of public money was left exposed in the midst of a great city, in full view, and within easy reach of any adroit thief, for a space of probably five or ten or twenty minutes.

The committee recommend that the bill should not be passed.

The foregoing, embodying the facts in this case, as shown by the evidence, is adopted as part of this report. The Secretary of the Treasury responds, under date of December 12, 1879, to a letter from this committee asking an expression of opinion as to the propriety of granting relief in this case, that he has no additional information since the date of the reports herein mentioned.

Your committee have carefully reviewed all evidence, including the report of the special agent, who examined the facts relating to the robbery, and are of opinion that proper care was wanting in providing the necessary fixtures for guarding the public treasure, and that a lack of vigilance is shown in leaving for a moment large sums exposed to the view and possible access of the public, when not under the especial charge of a responsible government agent.

Believing it contrary to good policy that reimbursement should be made for losses where negligence can fairly be presumed, your committee report the bill adversely and recommend its indefinite postponement.

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